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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Review of the Pioneer's
Preference Rules

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ET Docket 93-266

COMMENTS OF ROCKWELL INTERNATIONAL CORPORATION

Pursuant to Section 1.415 of the Federal Communications Commission ("the Commission") Rules and Regulations, Rockwell International Corporation ("Rockwell") hereby submits an original and nine copies of Comments on the Notice of Proposed Rulemaking regarding a Review of the Pioneer's Preference Rules. Rockwell is a long-established manufacturer of wireline telecommunications products and, in addition, is now a supplier to the emerging wireless communications markets. Rockwell, therefore, has an interest in seeing the expeditious resolution of the pioneer's preference rules.

This rulemaking seeks to review the Commission's pioneer's preference rules in light of recently enacted statutory authority to assign licenses by competitive bidding and to seek comments regarding the possible modification to, or repeal of, the pioneer's preference rules. The Commission solicited comments on whether any changes to the rules should be applied in three pioneer's preference proceedings in which it has issued Tentative Decisions, including broadband PCS. Rockwell urges the Commission to avoid retroactive application of pioneer preference rule changes in proceedings in which it has

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issued Tentative Decisions, especially in broadband PCS; to exclude pioneer's preference grants from the competitive bidding procedures, and to expeditiously resolve the broadband PCS preferences and grant suitable final licenses.

Pioneer's Preference Rule Changes Should Not be Retroactively Applied

Entrepreneur innovators of broadband PCS, in response to the Commission's unambiguous offer of preferences, made decisions to invest their time, efforts and personal financial resources in the development of PCS technologies. From the time the Commission announced its pioneer's preference rulemaking in 1991, the Commission has continued to support the preference policy in a number of Commission actions.¹ In reliance upon Commission representations, PCS innovators have sought and obtained financial support so that they could quickly bring the benefits of PCS to the public, create jobs through the establishment of new businesses and promote U.S. competitiveness in export markets.

¹ Request for Pioneer's Preference in Proceeding to Allocate Spectrum for Fixed and Mobile Satellite Services for Low-Earth Orbit Satellites, Tentative Decision, 7 FCC Recd. 1625 (1992); Establishment of Procedures to Provide a Preference to Applicants Proposing an Allocation for New Services, 7 FCC Recd. 1808 (1992); Amendment of the Commission's Rules to Establish New Personal Communications Services, 7 FCC Recd. 5677, et seq. (1992); Amendment of Sec. 2.106 of the Commission's Rules to Allocate the 1610-1626.5 MHz and the 2485.5-2500 MHz Bands for Use by the Mobile Satellite Service, Including Non-Geostationary Satellites, 7 FCC Rec. 6416, et seq. (1992); Amendment of the Commission's Rules to Establish New Personal Communications Service, 7 FCC Rec. 7794 et seq. (1992); Rulemaking to Amend Parts 1 and 21 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service, 8 FCC Rec. 557 et seq. (1993); Amendment of Sec. 2.106 of the Commission's Rules to Allocate Spectrum to the Fixed Satellite Service and the Mobile Satellite Service for Low-Earth Orbit Satellites, 8 FCC Rec. 1812, et seq. (1993); Establishment of Procedures to Provide Preference to Applicants Proposing an Allocation for New Services, 8 FCC Rec. 1659 (1993); Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Service, FCC 93-329 (1993).

The Omnibus Budget Reconciliation Act of 1993 ("the Act")² specifically provides that "Nothing in this subsection or in the use of competitive bidding shall...be construed to prevent the Commission from awarding licenses to those persons who make significant contributions to the development of a new telecommunications service or technology...." Thus, Congress was explicit that it was in no way changing the pioneer's preference rules. The Commission, therefore, should not now seek to retroactively apply any rule changes to the pioneer's preference applicants who proceeded under the current rules.

Equity also requires that the broadband PCS preferences be awarded in view of the final grant to the narrowband pioneer, MTel. Broadband and narrowband PCS are, in fact, part of the same proceeding (Gen. Docket 90-217, FCC 91-112). It was the timing of decisions by the Commission that resolved the narrowband issues prior to the broadband issues. Had the situation been reversed, MTel would now be facing the possibility of retroactive rule changes, while the three broadband preferences would be finalized. If, as the Commission stated, "equity" required it to finalize the grant to MTel, then equity must also require the Commission to finalize the grants to the broadband PCS pioneers. Both the narrowband and broadband pioneers operated under the current policy and representations by the Commission. The two should not now be subjected to different standards and requirements.

² Omnibus Budget Reconciliation Act of 1993, (PL 103-66), Title VI, Sec. 6002(j)(6) and (j)(6)(G).

Pioneer's Preferences Should Not be Subject to the Competitive Bidding Procedures

As noted above the Commission has finalized the narrowband PCS grant to MTel. In the Order finalizing MTel's preference the Commission made note that auction legislation was pending at the time. The Commission did not say that it would revisit the grant to MTel once that legislation was in place. The same equity that requires that the broadband PCS preferences be finalized, requires that the broadband preferences not be subjected to competitive bidding procedures when the narrowband preference was placed outside of those provisions.

As a result of the offer by the Commission of a preference and in accordance with the Commission preference policy, the pioneer's preference applicants have also made public the details of their plans and technologies. No perspective bidders at an auction for spectrum will have operated under such requirements. The tentative pioneer's preference licensees would be placed at a competitive disadvantage if now subjected to auction procedures and would have no assurance that they would receive a license. No benefit from the competitive bidding procedures would accrue to the tentative licensees, and the same delays and risks to innovators that the Commission's pioneer preference rules were to eliminate would be reintroduced into the process stifling the development of new technologies that the rules were designed to promote.

Further, the Omnibus Budget Reconciliation Act authorizes the use of competitive bidding "if mutually exclusive applications are accepted...for any initial license or construction permit...." The Commission rules at 47 CFR 1.402(b) states that: "If awarded, the pioneer's preference will provide that the petitioner's application for a construction

permit or license will not be subject to mutually exclusive applications." (emphasis added).

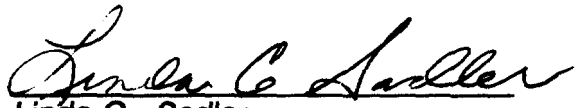
It is clear, therefore, that the language of the Omnibus Budget Reconciliation Act (which applies only to mutually exclusive applications), read with the earlier established Commission rule (which specifically excludes pioneer's preferences from mutually exclusive applications), exempts the pioneer's preference grants from the competitive bidding provisions of the Act. The Commission should proceed under its original intention to **award** the licenses to the tentative licensees who have now demonstrated the benefits of their technologies and their commitment to development of the industry.

Early Resolution of Broadband PCS Preferences and Grant of License

The subject rulemaking has added delay and uncertainty to the deployment of broadband PCS services by the pioneer's preference applicants causing injury to both the public who is deprived of the technological innovations and to the applicants who have relied on the Commission's representations of a preference. As noted in the comments above, the delay in finalizing broadband PCS preferences is a purely arbitrary decision. The Commission is urged to sever from further consideration in the rulemaking, and expeditiously resolve, the issues of retroactive application of rule changes and competitive bidding procedures as they affect the broadband PCS applicants.

Further, the Commission should not now minimize the award that was anticipated and upon which the tentative licensees' service and technology were based. Any final award should parallel that given in the tentative grants and should include sufficient spectrum to support the technology that the licensee has proposed.

Respectfully submitted,

By 
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